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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 125

ALABAMA DRY DOCK & SHIPBUILDING COMPANY, A CORPORATION,

Petitioner and Appellee Below,

versus

M. W. CALDWELL, HOLLIS B. CORR, JOSEPH W. DARNELL, T. P. DUNCAN, S. C. GREEN, H. H. HYDEN and C. A. McCULLOUGH,

Respondents and Appellants Below

No. 126

ALABAMA DRY DOCK & SHIPBUILDING COMPANY, A CORPORATION,

Petitioner and Appellee Below,

versus

J. J. ANDREWS, MARY HOWTON, J. S. HENDERSON, C. BARNES, WILLIAM AUGUSTA HUNT, SR., JAMES M. EDWARDS and HENRY GREEN,

Respondents and Appellants Below

BRIEF OF RESPONDENTS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1479

ALABAMA DRY DOCK & SHIPBUILDING COMPANY,
A CORPORATION,

Petitioner and Appellee Below,

versus

M. W. CALDWELL, HOLLIE B. COBB, JOSEPH W. DARNELL, T. P. DUNCAN, G. C. GREEN, H. H. HYDEN AND C. A. MCCULLOUGH,

Respondents and Appellants Below

No. 1480

ALABAMA DRY DOCK & SHIPBUILDING COMPANY,
A CORPORATION,

Petitioner and Appellee Below

versus

J. J. ANDREWS, MARY HOWTON, J. S. HENDERSON, C. BARNES, WILLIAM AUGUSTA HUNT, SR., JAMES M. EDWARDS AND HENRY GREEN,

Respondents and Appellants Below

BRIEF OF RESPONDENTS

OPINIONS OF THE COURT BELOW

The opinions of the Circuit Court of Appeals for the Fifth Circuit in both of these cases before this Court for review have not been officially reported, but are set out in the records (Caldwell, R. 29; Andrews, R. 37). The District Court rendered its decisions without opinions.

STATEMENT OF THE CASES

On August 27, 1945, Local 18, Industrial Union of Marine and Shipbuilding Workers of America, an unincorporated voluntary association, as Agent for, and Representative of, Minnie B. Alexander, et. al., and others similarly situated, brought an action against the Alabama Dry Dock & Shipbuilding Company, a corporation, defendant, in the District Court of the United States for the Southern District of Alabama (Civil Action File No. 551), to recover overtime compensation, damages and attorneys' fees under Section 16 (a) of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C.A. 216 (b). The complaint in that cause appears in the Andrews record on page 4 and in the Caldwell record on page 4. The complaint alleges, in part, that the employees, on behalf of whom the case was filed, were regularly employed by the Petitioner during a period beginning January 1, 1942, and ending January 16, 1945, as plant guards and firemen in its police and fire departments. These employees, in the performance of their duties as guards and firemen, among their other duties, were charged with the protection of ships under construction, produced, outfitted and repaired for sale, delivery and transportation in interstate commerce, by the Petitioner, at its plant, at Mobile, Alabama. Their work was an essential part of the production, outfitting and repairing of such ships, and it was necessary to the completion of

such ships produced, outfitted and repaired for delivery in interstate commerce. During the period of employment of said Employees, the Petitioner failed and refused to compensate them for part of such employment in excess of forty (40) hours in work weeks at rates not less than one and one-half ($1\frac{1}{2}$) times the regular hourly rate at which they were employed. Said Employees were required by the Petitioner to report to their supervisors every day at their place of work on the property of the Petitioner at least thirty (30) minutes prior to the time they began making their regular daily rounds and performance of their regularly assigned duties. During this period, the roll was called, said employees' equipment was checked, and they were given orders and instructions with regard to the performance of their daily duties. At all times during the said period, the employees were under the control and supervision of the Petitioner. Such time worked by them was not recorded by the Petitioner and they were not compensated in any sum for such work in excess of forty (40) hours per week.

On March 29, 1946, Respondents, J. J. Andrews, et. al., filed in the said District Court their motion for leave to file their petition of intervention in Civil Action No. 551, and simultaneously filed therewith their intervening petition against the Petitioner. (Andrews Record. 10-14). This motion was granted by the Court and said parties were permitted to intervene. (Andrews Record, 15). The Petitioner in answer to the Respondents' intervention petition, among other defenses, set up the Act of the Legislature of the State of Alabama, Approved July 6, 1943 (General Acts of Alabama, 1943, page 363) hereinafter referred to as The Act of 1943, claiming that the one year statute of limitations barred a recovery by the Respondents. Thereupon, the Respondents filed their motion to strike the Pe-

titioner's defenses as set up alleging that The Act of 1943 was unconstitutional and void under the XIV Amendment of Section 1 of the Constitution of the United States and Article VI of the Constitution of the United States. The said District Court overruled the Respondents' motion to strike, thereupon the Respondents suffered final judgment against them and appealed to the Circuit Court of Appeals for the Fifth Circuit. .

On August 23, 1946, M. W. Caldwell, et. al., petitioned said District Court for leave to file their petition of intervention in Civil Action 551. On the 11th day of September, 1946, the District Court heard the Respondents' motion for leave to intervene but said motion was denied by the District Court on the grounds that on the face of the Respondents' petition of intervention accompanying their motion, it appeared that the claims asserted therein accrued more than one year before the filing of said motion and hence the Respondents were barred by the Act of 1943; whereupon, the District Court taxed the Respondents with costs of the motion and ordered execution to issue. Whereupon, M. W. Caldwell, et. al., appealed from the ruling of the District Court to the Circuit Court of Appeals for the Fifth Circuit.

THE ARGUMENT

Summary of the Argument

The Court below has held that the Act of the Legislature of Alabama of 1943 (General Acts of Alabama of 1943, page 363) is unconstitutional under Section 1 of the XIV Amendment of the Constitution of the United States, and Article VI of the Constitution of the United States. It is the contention of the Respondents that the Court below

correctly applied the law and decisions of this Court in reaching its judgments in the said two cases.

The Act of 1943 seeks to limit the right of recovery,

> "Of wages, overtime, damages, fees, or penalties, accruing under laws respecting the payment of wages, overtime, damages, fees and penalties, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938, as same has been or may hereafter be amended, and all other similar Acts, shall be brought within one year after the accrual of such cause of action."

The Petitioner attempts to persuade this court that The Act of 1943 is a general statute of limitations and, therefore, being general, constitutional. It is our earnest insistence that this Act is not, in any sense of the word, a general statute of limitations, but is an abortive effort on the part of the Legislature of Alabama to limit and restrict a federal right and remedy created by Section 16 of the Fair Labor Standards Act of 1938 (Section 216, Title 29, U.S.C.A.). The Petitioner, says that the Act applies not only to the rights created by the Fair Labor Standards Act, but to similar acts, and they refer to the language of the Act. However general the language of a statute may be, if, in reality, it applies only to one situation or one right, the statute designates and restricts, even though its language may purport to apply generally. If there is only one field of operation for it, the generality of its language may not obscure its purpose or intent. By its own verbiage, The Act is directed to:

> "*Specifically * * * the Act of Congress known as the Fair Labor Standards Act of 1938.*"

This Court has repeatedly pointed out

> "in whatever language a statute may be framed, its

purpose must be determined by its natural and reasonable effect * * * "

Henderson, et. al., v. Mayor of New York, et. al., 92 U. S. 259, 268;
Minnesota v. Barber, 136 U. S. 313, 319;
Brimmer v. Rebman, 138 U. S. 78, 82;
Foster Packing Co. v. Haydel, 278 U. S., 1, 11;

A statute may not

"Under the guise of exerting its police powers * * * make discriminations."

in contravention of federal rights or powers. *Brimmer v. Rebman, supra.*

The Act of July, 1943, is directed specifically at the Fair Labor Standards Act of 1938 "as same has been or may hereafter be amended, and all similar acts." If the ejusdem generis rule of interpretation of statutes is to be resorted to for ascertaining the intent of the Legislature of Alabama, then it is clear that the Act of July, 1943, relates only to compensation accruing under the Fair Labor Standards Act for 1938, and similar acts.

North American Acc. Ins. Co. v. Pitts, 213 Ala. 102
28 C. J. S. 1049

Again, a laborer's rights to his wages do not accrue "under laws respecting the payment of wages." The right of man to the fruits of his honest labor is an inherent right, that finds its origin in his primitive struggle for spiritual, intellectual and physical freedom. It is of that nature of rights, of which Chief Justice Marshall so eloquently spoke in *Gibbons v. Ogden,* 9 Wheat., 211, and to which reference was made in *U. S. v. Cruikshank,* 92 U. S. 452, 23 L. Ed. 588, as follows:

> "In fact it is and always has been one of the Attributes of citizenship under a free government. It derives its source from those laws whose authority is acknowledged by civilized men throughout the world."

See also

Powe v. U. S. 109 Fed. 2d. 147

Since the Act of July 6, 1943, relates only to wages, overtime, damages, fees or penalties accruing under the Fair Labor Standards Act of 1938 and all other similar acts, it is a clear limitation and restriction of a federal right and remedy. In Alabama, there is no act similar to the Fair Labor Standards Act of 1938; and there being none, the validity of the Act of July 6, 1943, may not be upheld upon the bare possibility that such an act may hereafter be adopted in Alabama.

Birmingham Electric Co. v. Harry, 215 Ala. 458, 111 So. 41;
Board of Revenue v. Huey, 195 Ala. 83, 70 So. 744;
Mobile County v. Byrne, 218 Ala. 5, 117 So. 83;
Crow v. Mobile Board of School Commissioners, 228 Ala. 107, 152 So. 26;
State ex rel Hyland v. Baumhauer, 244 Ala. 1, 12 So. 2d. 326

At the present time, the Act of July 6, 1943, is a clear restraint upon rights and remedies of citizens of the United States created by the Fair Labor Standards Act of 1938. Discrimination is a question of fact; a matter of equal treatment under the law:

Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220;
Green v. Louisville and Nashville Railroad Co. 244 U. S. 497, 61 L. Ed. 1280;

Louisville and Nashville Railroad Co. v. Green, 244 U. S. 520, 61 L. Ed. 2191;

It is therefore clear that the Act of July 6, 1943, is not only discriminatory in its language; but also in its consequences.

Petitioner's contention that compensation due under the Fair Labor Standards Act may be reasonably classified separate and apart from compensation due an employee not under the Fair Labor Standards Act, we submit, is not sound.

If compensation as defined in *Overnight Transportation Co. v. Missel,* 316 U. S. 572, 86 L. Ed. 1682, may be reasonably classified separate and apart from compensation due to a workman not under the Fair Labor Standards Act, then, we respectfully submit, that the decisions in *Kappler v. Republic Pictures Corporation,* 151 Fed. 2d. 543, affirmed 327 U. S. 757, and *Davis, et. al. vs. Rockton and Rion Railroad,* 159 Fed. 2d 291, and *Fullerton v. Lamn,* 163 Pac. 2d. 941, would have been the reverse of what they are. For instance, the South Carolina Act which was held unconstitutional in the case of *Davis, et. al. v. Rockton and Rion Railroad,* 159 Fed. 2d. 291 was directed exclusively at claims arising under a federal law. If a claim for compensation due under this federal law was itself a just subject for reasonable classification, separate and distinct from a local claim for wages due an employee not under the Fair Labor Standards Act, then why did not the court uphold the South Carolina Act as a reasonable classification? This statement might be repeated with respect to the decisions of *Kappler v. Republic Pictures Corporation,* 151 Fed. 2d. 543, affirmed 327 U. S. 757, and *Fullerton v. Lamn,* 163 Pac. 2d. 941. The very fact that the decisions declared the respective acts of South Carolina, Iowa and

Oregon unconstitutional, as discriminatory of federal rights, is decisive of the question, that compensation due under the Fair Labor Standards Act, may not be treated differently from compensation due to an employee under that Act.

It is our earnest insistence that compensation due employees under the Fair Labor Standards Act is treated differently by the Act of 1943 from compensation due to an employee not under the Fair Labor Standards Act.

This court affirmed without decision the case of *Kappler vs. Republic Pictures Corporation,* 151 Fed. 2d. 543, 327 U. S. 757 on the authority of

McKnett v. St. Louis & S.F.R. Co., 292 U. S. 230, 233, 234;
Pufhal v. Parks, 299 U. S. 217, 227;
Miles v. Illinois C. R. Co., 315 U. S. 698, 704

The opinion of the Circuit Court of Appeals in that case stated:

> "A state may not discriminate against rights accruing under federal laws. *McKnett v. St. Louis & S. F. R. Co.,* 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227; *Pufhal vs. Estate of Parks,* 299 U. S. 217, 57 S. C. 151, 81 L. Ed. 133. Except the special statute directed at the causes of action arising under federal law, every other limitation on an action at law or suit in equity in the Iowa statutes is directed at the nature of the claim asserted without reference to the authority which creates the right asserted. This is a discrimination against the United States. The action for overtime under the statute is an action on contract; at least, the federal statute is bottomed upon a contract of employment. As said in *Northwestern Yeast Co.*

v. Broutin, 6 Cir., 133 F. 2d. 628, 630: 'The federal statute is premised upon the existence of an employment contract. * * * The action for double compensation may be considered as debt or as an action for wages due under the employment agreement.'

Were it not for the fact that Plaintiff's right can be traced to a federal statute, he could have brought his action in five years after its accrual if his contract were not written or he could have brought it in ten years if it were written. His claim or cause of action is discriminated against solely because it arises under a federal statute. This discriminatory treatment of a claim arising under a federal statute in effect makes inferior congressional enactments and rights which under our jurisprudence are intended to be paramount and supreme. As said by the Supreme Court in *Stewart & Co. v. Sadrakula,* 309 U. S. 94, 60 S. Ct. 431, 436, 84 L. Ed. 596, 127 A. L. R. 821: 'Where enforcement of the state law would handicap efforts to carry out the plans of the United States, the state enactment must, of course, give way.'

While the sphere of sovereignty of the federal government is a limited one, yet its power over the subjects committed to it is full and complete and its laws are 'the supreme Law of the Land * * * any thing in the Constitution or Laws of any State to the Contrary notwithstanding.' Art. 6, U. S. Constitution. As a federal right is here involved, the state can not justify a discrimination against such right. *Miles v. Illinois Central R. Co.,* 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129, 146 A.L.R. 1104.

In *Pufhal v. Estate of Parks, supra,* an action was brought in a state court by the receiver of a national

bank to recover stockholders' liability under a federal statute. Holding that the receiver was governed by the law of the forum with respect to the marshaling of assets, priority of distribution, etc., the court said (229 U. S. 217, 57 S. Ct. 157): 'This is not to say that a state may deny all remedy for the substantive right arising out of the federal statute * * *; it is merely to say that if the state does not discriminate against the receiver's claim in favor of others of equal dignity and like character, there is no warrant for exempting the claim from the effect of local statutes governing procedure or limiting the time for prosecution of action.' (Italics supplied).

See, also, *Campbell v. City of Haverhill,* 155 U. S. 610, 15 S. Ct. 217, 39 L. Ed. 280.

Here, the state has singled out federal claims or causes of action as such and has prescribed a shorter period of limitation for the bringing of such actions than that prescribed for the bringing of similar actions arising or based upon other than federal laws. The statute violates Article 6 of the Constitution in that it '(discriminates) against rights arising under federal laws.' *McKnett v. St. Louis & S. F. R. Co., supra* (292 U. S. 230, 54 S. Ct. 692). Its enforcement would result in denying to those seeking to assert such claims, the equal protection of the law. 14th Amendment, Constitution, Sec. 1. Equal protection of the law in its constitutional sense implies that all litigants similarly situated may appeal to the courts for relief under like conditions and without discrimination."

We again find in the most recent decision of the case of *Davis, et. al. vs. Rockton and Rion Railroad, supra,* that

the United States Circuit Court of Appeals for the Fourth Circuit held the South Carolina statute of limitations unconstitutional in its application to a suit brought under the Fair Labor Standards Act. The Court said:

> "We think * * * that the statute (1 year statute of limitations) is invalid. The statute is directed solely to claims 'relating to wages claimed under a federal statute.' It is a fair inference that the statute was purposely aimed at the FLSA. The law seems well settled that a statute of limitations of a state is unconstitutional when the statute is directed exclusively at claims arising under a federal law, and particularly is this true when the state statute of limitations is discriminatory in its effect in favor of state claims and against federal claims for the ordinary wage claims arising in South Carolina would not be barred in less than six years under the South Carolina statute."

The *Kappler vs. Republic Pictures, supra* decision was cited in support of the unconstitutionality of the South Carolina Act, along with

Miles v. Illinois C. R. Co., supra;
McKnett v. St. Louis & S. F. R. Co., supra;
Campbell v. Haverhill, 155 U. S. 610;
E. H. Clark Lumber Co. v. Kurth, 152 Fed. 2d. 914;
Fullerton v. Lamn, 163 Pac. 2d. 941
Swick v. Glenn L. Martin Co., 160 Fed. 2d. 483.

We further find in the decision of *Fullerton v. Lamn, supra*, that the Supreme Court of the State of Oregon held that the Oregon statute of limitations, as applied to the Fair Labor Standards Act, unconstitutional, and said:

"But legislation manifestly hostile to the exercise of rights granted by a federal statute cannot stand. *Campbell vs. Haverhill, supra.* The Fair Labor Standards Act was enacted by Congress under the commerce clause of the Constitution and is 'the Supreme Law of the Land' United States Const. Article VI, binding upon every citizen and upon the legislatures and Courts of the several states. 'Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights * * * is not to be defeated under the name of local practice,' *Davis v. Wechsler,* 263 U. S. 22, 24, 44 S. Ct. 13, 14, 68 L. Ed. 143. 'It is familiar doctrine that the prohibition of a federal statute may not be set as naught, or its benefits denied, by state statutes or state common law rules.' *Sola Electric Co. v. Jefferson Electric Co.,* 317 U. S. 173, 176, 63 S. Ct. 172, 173, 87 L. Ed. 165."

The Respondents' claim against the Petitioner is based upon work and labor done at the request of the Petitioner. Prior to the passage by the Legislature of the Act of 1943, employees in the same jobs as held by the Respondents were governed by either the three year or the six year statute of limitations of the State of Alabama. (Title 7 Sections 21 and 24, Code of Alabama of 1940). With the passage of the Act of 1943, these same persons were then subjected to a statute of limitations of one year. It certainly cannot be said that the Respondents are afforded the same protection in the enforcement of their rights against the Petitioner as is given those persons whose labor contracts do not fall within the purview of the Fair Labor Standards Act. Those employees not coming under the Fair Labor Standards Act may maintain an action on their

contract of employment anytime within six years from the date their right of action accrued. It is, therefore, clearly shown that the Respondents are denied equal protection of the law as guaranteed to them under the Constitution of the United States.

CONCLUSION

It is our earnest insistence that the Court below did not err in holding the Act of 1943 unconstitutional and that its decisions are in conformity with decisions of this Court and the various circuit courts of appeal throughout the United States. We, therefore, respectfully submit that the Petitioner's writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit should be denied.

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APPENDIX

ACT OF THE LEGISLATURE OF THE STATE OF ALABAMA, Approved July 6, 1943 (General Acts of Alabama, 1943, page 363):

"No. 394 (S. 166—Simpson)

AN ACT

To limit the time within which suits may be brought in the courts of this State for the recovery of wages, overtime, damages, fees or penalties accruing under laws respecting the payment of wages and overtime, and specifically under the Act of Congress designated as the Fair Labor Standards Act of 1938 and similar laws.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. That all suits and actions for the recovery of wages, overtime, damages, fees or penalties accruing under laws respecting the payment of wages, overtime, damages, fees and penalties, and specifically under the Act of Congress known as the Fair Labor Standards Act of 1938, as same has been or may hereafter be amended, and all other similar Acts shall be brought within one year after the accrual of such cause of action, and all such causes of action accruing prior to the date hereof shall be brought within one year after the passage of this Act. This Act shall not effect suits pending at the time of its passage.

Section 2. This Act shall become effective upon its signature by the Governor.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Approved July 6, 1943."

TITLE 7, SECTION 21, ALABAMA CODE OF 1940:

"§ 21. (8944) (4835) (2796) (2615) (3226) (2901) (2477) Limitation of six years. — The following must be commenced within six years:

Actions for any trespass to person or liberty, such as false imprisonment, or assault and battery.

Actions for any trespass to real or personal property.

Actions for detention or conversion of personal property.

Actions founded on promises in writing not under seal.

Actions for the recovery of money upon a loan, upon a stated or liquidated account, or for arrears of rent due upon a parol demise.

Actions for the use and occupation of land.

Motions and other actions against the sureties of any sheriff, coroner, constable, or any public officer, or actions against the sureties of executors, administrators, or guardians, for any nonfeasance, misfeasance, or malfeasance, whatsoever, of their principal; the time to be computed from the act done or omitted by their principal, which fixes the liability of the surety.

Motions and other actions against attorneys at law, for failure to pay over money of their clients, or for neglect or omission of duty.

Actions founded upon judgments obtained before justices of the peace of this state.

Actions upon any simple contract or specialty, not herein specifically enumerated."

TITLE 7, SECTION 24, ALABAMA CODE OF 1940:

"§ 24. (8947) (4838) (2799) (2618) (3229) (2904) (2480) Limitation of three years.—The following must be commenced within three years:

Actions to recover money due by open or unliquidated account, the time to be computed from the date of the last item of the account, or from the time when, by contract or usage, the account is due.

Proceedings in any court of this state to disbar any attorney, authorized to practice law in this state (1915, p. 928)."

TITLE 7, SECTION 26, ALABAMA CODE OF 1940:

"§ 26. (8949) (4840) (2801) (2619) (3231) (2905) (2481) Limitation of one year.—The following must be commenced within one year:

Actions qui tam, or for a penalty given by statute to the party aggrieved, unless the statute imposing it prescribe a different limitation."